

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ANTONIO COLSON,

Plaintiff,

v.

Case No. 1:20-cv-595
JUDGE DOUGLAS R. COLE
Magistrate Judge Bowman

OHIO DEPARTMENT OF
REHABILITATION AND
CORRECTION,

Defendant.

ORDER

This cause comes before the Court on the Magistrate Judge's September 30, 2020, Report and Recommendation ("R&R") (Doc. 5). The Magistrate Judge recommends that the Court **DISMISS** with prejudice the Plaintiff's 42 U.S.C. § 1983 claim because the sole named defendant, the Ohio Department of Rehabilitation and Corrections ("ODRC"), is not a "person" acting under color of state law. Moreover, as a state agency, it is immune from suit under the Eleventh Amendment.

The R&R advised both parties that a failure to object within the 14 days specified by the R&R may result in forfeiture of rights on appeal, which includes the right to District Court review. (R&R at #52). *See also Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting § 636(b)(1)(C), intended to require a district judge to review a magistrate's report to which no objections are filed."); *Berkshire v. Beauvais*, 928 F.3d 520, 530 (6th Cir. 2019) (noting "fail[ure] to file an objection to the magistrate judge's R & R ... is forfeiture"); 28 U.S.C.

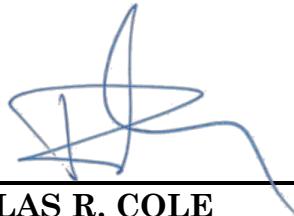
§ 636(b)(1)(C). The time for filing objections has long since passed, and none have been filed.

Therefore, the Court **ADOPTS** the Report and Recommendation (Doc. 5) and **DISMISSES** the Plaintiff's Complaint **WITH PREJUDICE**. In doing so, however, the Court notes that, while this determination precludes Colson from suing ODRC on these facts, Colson remains free to file a new case against an appropriate defendant if he can identify one. *See Sullivan v. Chappius*, 711 F. Supp. 2d 279, 283–84 (W.D.N.Y. 2010) (noting that employees of state agencies are typically not in privity with their agency employer for res judicata purposes). The Court further **ADOPTS** the recommendation that Colson's motion for appointment of counsel (Doc. 2) be **DENIED** as moot. As reasonable jurists could not disagree with these conclusions, Colson is denied a certificate of appealability and the Court certifies to the Sixth Circuit that any appeal would be objectively frivolous. The Court **DIRECTS** the Clerk to enter judgment accordingly.

SO ORDERED.

March 23, 2021

DATE



DOUGLAS R. COLE
UNITED STATES DISTRICT JUDGE